

Before the  
**Federal Communications Commission**  
Washington, D.C.

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APR 3 - 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of

Implementation of Section 309(j)  
of the Communications Act

-- Competitive Bidding for Commercial  
Broadcast and Instructional Television Fixed  
Service Licenses

Reexamination of the Policy  
Statement on Comparative  
Broadcast Hearings

Proposals to Reform the Commission's  
Comparative Hearing Process to  
Expedite the Resolution of Cases

MM Docket No. 97-234

GC Docket No. 95-52

GEN Docket No. 90-264

**MOTION FOR LEAVE TO FILE SURREPLY**

Trinity Broadcasting of Florida, Inc.; Trinity Christian Center of Santa Ana, Inc. d/b/a Trinity Broadcasting Network; Trinity Broadcasting of New York, Inc.; Reading Broadcasting, Inc.; and Two If By Sea Broadcasting Corporation (collectively, "the Joint Renewal Commenters") hereby move the Commission for leave to file a surreply in response to the reply comments filed by Simon T in the above-captioned proceeding.

**I. Factual Background**

In response to the Commission's *Notice of Proposed Rulemaking*, MM Docket No. 97-234, GC Docket No. 92-52 and GEN Docket No. 90-264, FCC 97-397 (rel. November 26, 1997) ("*NPRM*"), several parties, including the Joint Renewal Commenters, filed initial comments followed by reply comments. Simon T, a UHF television station applicant whose application is

mutually exclusive with the pending renewal application of TBN for Channel 40 in Santa Ana, California, did not file any initial comments in response to the *NPRM*. However, on February 17, 1998, Simon T filed reply comments that provided not only "Simon T's perspective on the comparative renewal matters raised by the Commission in its *NPRM*," but that were also "submitted, in part, to respond to the [comments filed by the Joint Renewal Commenters]."<sup>1</sup>

Never having filed initial comments in this proceeding, Simon T's reply comments essentially incorporated his comments on the proposals set forth in the *NPRM* and his response to the Joint Renewal Commenters' comments all in one paper. Because Simon T did not file what were actually his "comments" during the initial comment period, no other commenters had an opportunity to reply to Simon T's position during the reply comment period.

The Joint Renewal Commenters now request leave to file a response to Simon T's reply comments so that they, like Simon T, have an opportunity to respond to a position with which they disagree.

## **II. Argument**

Simon T has attempted to avoid the unpleasantness of having his position challenged before the Commission in this rulemaking proceeding by failing to file an initial set of comments in the comment/reply comment cycle. By his own admission, the paper that Simon T submitted as "reply comments" actually sets forth both Simon T's comments on issues proposed in the *NPRM* and his reply to comments filed by the Joint Renewal Commenters.<sup>2</sup> Because Simon T did not

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<sup>1</sup>Simon T Reply Comments at 3.

<sup>2</sup>*See id.*

submit what should have been his "comments" on the proposals set forth in the *NPRM* as comments, to which other commenting parties could have responded in their reply comments, Simon T's position on the *NPRM*'s proposals will stand virtually unchallenged and thus the record will be incomplete, unless the Commission grants the Joint Renewal Commenters' motion for leave to file a surreply in response to Simon T's reply comments.

Commenting parties' initial comments on the proposals set forth in an *NPRM* are not intended to stand unopposed; rather, a reply comment period is allowed so that parties have an opportunity to respond to one another's assertions.<sup>3</sup> The Commission's rules specifically state that "[a] reasonable time will be provided for filing comments in reply to the original comments."<sup>4</sup> By circumventing the initial comment round of the pleading cycle, Simon T eliminated the opportunity for other parties to reply to his comments. The Commission should not permit such manipulation of its processes.

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<sup>3</sup>See 47 C.F.R. § 1.415(c).

<sup>4</sup>*Id.* (emphasis added).

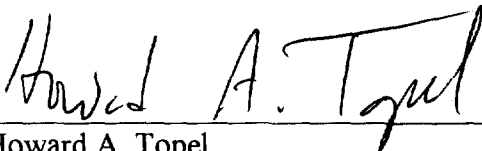
In the interest of fairness, and in order to have a more complete record upon which to base its decisions with regard to the implementation of rules in this proceeding, the Commission should grant this motion, and permit the Joint Renewal Commenters to file a surreply in response to Simon T's reply comments.

Respectfully submitted,

**TRINITY BROADCASTING OF FLORIDA, INC.**

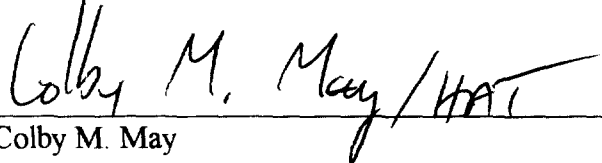
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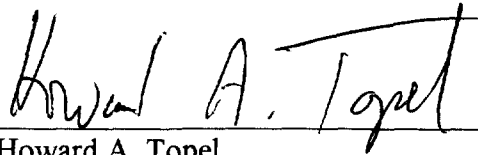
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Dated: April 3, 1998

**CERTIFICATE OF SERVICE**

I, Joan M. Trepal, a secretary in the law firm of Fleischman and Walsh, L.L.P., hereby certify that on this 3rd day of April, 1998, copies of the foregoing "Motion For Leave To File Surreply" were sent by first class mail, postage prepaid, to the following:

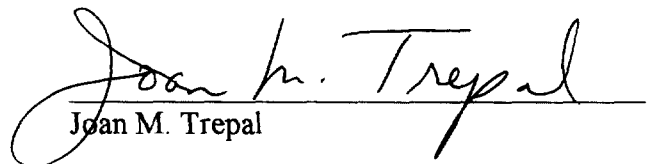
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